

# “Freedom to provide services” or “Dienstleistungsverkehrsfreiheit” or “libre prestation des services” or “hizmetin serbest dolaşımı”: Uniform Interpretation

■ *Asst. Prof. Dr. Hamdi Pınar\**

## Introduction

The European Court of Justice (ECJ) has made more than 50 decisions,<sup>1</sup> from its first decision, *Demirel* in 1987, until today about the freedom of Turkish nationals to provide services within the Community. The Association Agreement between Turkey and the Commu-

\* Academic member of Bilkent University, Faculty of Law. The writer may be reached at hpınar@bilkent.edu.tr.

<sup>1</sup> The decisions concerning freedom of movement and freedom to reside and settle in the EU for Turkish workers and the family members:

*Demirel* (30.9.1987, C-12/86); *Sevince* (20.9.1990, C-192/89); *Kuş* (16.12.1992, C-237/91); *Eroğlu* (5.10.1994, C-355/93); *Bozkurt* (6.6.1995, C-434/93); *Tetik* (23.1.1997, C-171/95); *Kadıman* (17.4.1997, C-351/95); *Eker* (29.5.1997, C-386/95); *Kol* (5.6.1997, C-285/95); *Ertanur* (30.9.19997, C-98/96); *Günaydın* (30.9.1997, C-36/96); *Akman* (19.11.1998, C-210/97); *Birden* (26.11.1998, C-1/97); *Ergat* (16.3.2000, C-329/97); *Eyüp* (22.6.2000, C-65/98); *Kurz* (19.11.2002, C-188/00); *Ayaz* (30.9.2004, C-275/02); *Sedef* (10.01.2006, C-230/03); *Torun* (16.2.2006, C-502/04); *Güzeli* (26.10.2006, C-4/05); *Polat* (4.10.2007, C-349/06); *Payır* (24.1.2008, C-294/06); *Er* (25.9.2008, C-453/07); *Altun* (18.12.2008, C-337/07); *Şahin* (17.9.2009, C-242/06); *Bekleyen* (21.1.2010, C-462/08); *Genç* (4.2.2010, C-14/09).

The decisions concerning the equal treatment of Turkish nationals and their family members in regards to social rights:

*Taşlan-Met* (10.9.1996, C-277/94); *Sürül* (4.5.1999, C-262/96); *Öztürk* (28.4.2004, C-373/02); *Gürol* (7.7.2005, C-374/03).

The decisions concerning the limitation on deportation of Turkish nationals:

*Nazlı* (10.2.2000, C-340/97); *Çetinkaya* (11.11.2004, C-467/02); *Aydınlı* (7.7.2005, C-373/03); *Dörr ve Ünal* (2.6.2005, C-136/03); *Doğan* (7.7.2005, C-383/03); *Derin* (18.7.2007, C-325/05); *Polat* (4.10.2007, C-349/06).

The decisions concerning discrimination of Turkish nationals in the EU:

*Koçak ve Örs* (14.3.2000, C-102/98, C-211/98); *Wählergruppe* (8.5.2003, C-171/01); *Öztürk* (28.4.2004, C-373/02); *Kahveci* (25.7.2008, C-152/08); *Komisyon/Hollanda* (29.4.2010 tarih ve C-92/07).

The decisions concerning the freedom to provide services and the freedom to reside and settle in the EU:

*Savaş* (11.5.2000, C-37/98); *Abatay* (21.10.2003, C-317/01, C-369/01); *Tüm ve Darı* (20.9.2007, C-16/05) and *Soysal* (19.2.2009, C-228/06); *Komisyon/Hollanda* (29.4.2010 tarih ve C-92/07).

See <http://curia.europa.eu> for the decisions of ABAD.

nity of 1963, the Additional Protocol of 1973, the Customs Agreement of 1996 and a great number of decisions of the Council of Association constitute the association law between the EU and Turkey. Developments which allow entrance to the EU without a visa, within the context of the freedom of movement for Turkish nationals, started in 2000 with the Savaş decision and were clarified unambiguously with the Soysal decision on February 19, 2009.

It is widely believed that Additional Protocol C.41, which came into force on January 1, 1973, along with the Savaş decision in 2000, is a decree that has a direct effect. It clarified who is able to benefit from Additional Protocol provision C.41/1 and the cross-border concept between Turkey and the EU as a consequence of the Abatay decision in 2003, which concerns the Turkish transport sector and Turkish drivers.

After these two decisions, only two objections remained with respect to the freedom to provide services. The first objection – that visa requirement upon first entry into the territory of a Member State falls within the exclusive competence of each Member State – was overruled by the ECJ with the Tım and Darı decision of 2007.

The ECJ has clearly articulated that Additional Protocol provision C.41/1 is also applicable to the rules regarding first entries of Turkish nationals related to the freedom of domicile (as well as the freedom to provide services) resulting from Association law. As a result of the second objection – subject to the Soysal decision of 2009, the court ruled that uniform visa requirement resulting from the Schengen visa cannot be restricted and that the Schengen visa is a new restriction for Turkish nationals, in violation of C. 41 (1) of the Additional Protocol.

In the ECJ decisions concerning the freedom to provide services from an EU law point of view, Turkish and German literature, and also German local courts, have accepted to allow Turkish nationals to travel to Europe without a visa mainly within the scope of the freedom to provide services. In this way, the freedom to provide both active and passive services and the correspondence service act (*Korrespondenzdienstleistung*) could be discussed in terms of the freedom to provide services.

In spite of this clarity, the declarations of German and Danish authorities on the EU Commission fueled a new argument that only the freedom to provide active services can be included for Turkish nationals. The main reason for this assertion is that the subjects of the Savaş, Abatay, Tım and Darı and Soysal decisions of the ECJ all concerned the freedom to provide active services. The EU Commission, the defender and the coordinator of EU values, has also indirectly contributed to this argument by remaining content with a superficial declaration on these decisions, instead of thoroughly analyzing the subject.

In this article, first the regulations of the community law and EU regulations will be compared in order to identify any differences in meaning resulting from the usage of different terms in different languages. Then, the article will discuss whether a different conclusion could be possible by taking the decisions of the ECJ into consideration.

### I. THE EU COMMISSION GUIDELINES (MAY 7, 2009)

The EU Commission prepared a quite superficial guideline, dated May 7, 2009, after the ECJ Soysal decision. In this guideline, ECJ decisions on the matter were not evaluated in detail; moreover, a policy of misdirection was pursued by limiting the scope of the guidelines to the freedom to provide active services,<sup>2</sup> the subject of the Soysal decision. The EU Commission thereby only tried to relieve themselves of the burden of this matter instead of resolving the contradiction in the process of the case. The guideline is indeed quite superficial and only examines the visa-free entry of Turkish nationals into Germany and Denmark. In this context, the possibilities that can be encountered in practice were indicated by taking into consideration other countries which were included in the Schengen area and had visa requirements (e.g. Austria and Poland). From February 19, 2009 onwards, unfortunately, the EU Commission has done nothing to combat these unfair visa practices, save for the abovementioned superficial study.

### II. DECLARATIONS OF GERMANY AND DENMARK

In the Circulars<sup>3</sup> issued by the German Ministry of External Affairs (dated April 28, 2009) and Internal Affairs (dated May 6, 2009),<sup>4</sup> as well as in the annotations<sup>5</sup> prepared by the Turkish Embassy in Germany, it is stated that a visa cannot be required for people who fall within the scope of the freedom to provide active services, provided that duration of stay does not exceed 2 months, but it is also mentioned that Turkish nationals traveling to Germany in order to get service within the scope of freedom to provide passive service (e.g. as a tourist), do not have the right to enter the country without a visa.

In a declaration dated March 20, 2010, the Danish Ministry of Foreigners announced that a visa cannot be required of persons entering the country for purposes of temporary duty, holding an exhibition, or performing a concert, or who are athletes or truck drivers. It was stated that the visa exemption will apply only to Turkish nationals who pro-

2 "NOTE FROM THE COMMISSION - Guidelines on the movement across the external borders of Member States applying the Schengen acquis of Turkish nationals in order to provide services in a Member State". See **Hailbronner**, *Visafreiheit für türkische Staatsangehörige Zum Soysal-Urteil des EuGH, NVwZ 2009*, p. 766.

3 For the evaluation article about the effect of the circular dated May 6, 2009 and the Law no:M13-125 156/148 the decision of Soysal of Federal Ministry Of Internal Affairs which was sent to the Internal Affairs of The Member States See: <http://www.migrationsrecht.net/>, 10.2.2010 in PDF format.

4 Dienelt, Klaus: *Auswärtige Amt konkretisiert Begünstigte, die aufgrund des Soysal-Urteils visumfrei einreisen dürfen* (28.04.2009), (<http://www.migrationsrecht.net/>).

5 For the information note of German Embassy and the relevant press statement no.21, 05.06.2009, see: [http://www.ankara.diplo.de/Vertretung/ankara/de/03/Archiv/2009\\_21\\_\\_pressemitteilung\\_\\_download.property=Daten.pdf](http://www.ankara.diplo.de/Vertretung/ankara/de/03/Archiv/2009_21__pressemitteilung__download.property=Daten.pdf), last accessed on 18.01.2010)

vide services. Visa requirements still remain in force for Turkish nationals who want to visit Denmark as tourists or for similar purposes.<sup>6</sup>

### III. FREEDOM TO PROVIDE SERVICES

#### 1. Overview

Above all, the freedom to provide services complements the freedom of movement and the freedom of domicile of persons (e.g. workers); where an interdependent business relationship between the worker and the employer exists; this has been independent of the person who provides business/service with respect to the freedom to provide services and freedom of domicile. The condition for changing residence, which is necessary for the freedom of domicile, is not necessary for the freedom to provide services. The freedom to provide services involves the actual and temporary cross-border nature of the service. Within the context of the freedom of domicile, on the other hand, a real person or a legal person who provides services acclimates to the economy of the Member State in which they settle.<sup>7</sup>

In Article 50 of the Treaty Establishing the European Community (now, Article 57 of the Treaty on the Functioning of the European Union (TEFU)), activities of an industrial character, activities of a commercial character, activities of craftsmen and activities of others professions are listed as examples of the services within the concept of the freedom to provide services. Moreover, progress has made made with special arrangements, especially in services like finance, telecommunications and recognition of the mutual professional definitions.<sup>8</sup>

#### 2. The Elements of Freedom to Provide Services

Taking into consideration the fundamental decisions of the ECJ, services which essentially fall within the scope of the freedom of movement, shall have a transboundary character, shall be provided for a certain fee, and shall need to be predominately temporary. The concept of services provided for a certain fee and services being predominately temporary, i.e. the condition of being non-permanent, has been established in EU law with the decisions of the ECJ. Besides, the service should be transboundary. The condition of being transboundary will be met if the freedom to provide services is applicable, not only among the EU Member States, but also between Turkey and the EU Member States. The Abatay decision of the ECJ in 2003 is an embodiment of this situation. In this decision, it was accepted that there is a transboundary character if the service is being provided by a person who resides in Turkey or the service is provided by one of the

<sup>6</sup> Milliyet Newspaper 20.3.2010 (www.milliyet.com.tr).

<sup>7</sup> *Randelzhofer/Forsthoff*: in Grabitz/Hilf (Hrsg.), *Das Recht der Europäischen Union*, München 2009, Art. 49/50 EGV, No: 8 vd.

<sup>8</sup> A divorce of directive that arranges the services in single market, see [http://ec.europa.eu/internal\\_market/top\\_layer/index\\_19\\_de.html](http://ec.europa.eu/internal_market/top_layer/index_19_de.html) (last accessed on 17.12.2009).

EU Member States to a person residing in Turkey. Consequently, in terms of the freedom to provide services, Turkey does not have third country status. It is irrelevant whether the service is in the country of the person receiving the service in the form of production (e.g. construction works), the service is received by going to the country of the person providing the service, or the service is expendable (e.g. hotel or medical treatment services).<sup>9</sup>

### 3. The Scope of Freedom to Provide Service

#### a) Legal regulations

Comparing the different texts in different languages with regard to the freedom to provide services will help determine the scope of the service. The Treaty Establishing the European Economic Community, (also known as the Treaty of Rome), was signed between Germany, Belgium, France, Holland, Italy and Luxembourg on March 25, 1957. The Treaty was written in the German, French, Italian and Dutch languages. According to Article 248 of the Treaty of Rome, the concept in each language is binding in the same manner. According to this language order, the relevant part of the decree concerning the freedom to provide service is as follows:

*“Die Beschränkungen des freien Dienstleistungsverkehrs...”*

*“...les restrictions à la libre prestation des services...”*

*“...le restrizioni alla libera prestazione dei servizi...”*

*“...beperkingen op het vrij verrichten van diensten...”*

The Association Agreement, dated September 12, 1963 (also known as the Treaty of Ankara) was signed between the abovementioned six countries, the European Economic Council and Turkey. In Article 33 of the Treaty, it was stipulated that the Treaty was drawn up in two copies in Turkish, German, French, Italian and Dutch – and each text is equally valid. It is probable that the Turkish version of the Treaty was prepared by taking into account either the German or French versions of the Treaty Establishing the European Economic Community, or both. Both texts were repeated ‘mot-a-mot’ in the same manner, except the expressions that describe the parties.

The freedom to provide services contained in Article 14 of the Association Agreement was defined as follows:<sup>10</sup>

*“Âkit Taraflar, hizmet edimi serbestliği kısıtlamalarını aralarında*

<sup>9</sup> *Roth, Wulf-Hennig*: in Dausen (Hrsg.), Handbuch des EU-Wirtschaftsrechts, 24. Aufl., München 2009, E. I., No: 130 vd.; *Tiedje/Troberg*: Groeben/Schwarze (Hrsg.), Kommentar zum EU-/EG-Vertrag, 6. Aufl., München 2003, vor Art. 49, No: 9 vd.; *Kluth, Winfried*: in Calliess/Ruffert (Hrsg.), EUV/EGV, 3. Aufl., München 2007, Art. 49, No: 1 vd.; *Randelzhofer/Forsthoff*, Art. 49/50 EGV, No: 6 vd., also against, No: 18 vd.

<sup>10</sup> According to the Additional Protocol, all copies are equally valid, and it is stipulated that it is drawn up in two copies in the Turkish, German, French, Italian and Dutch languages.

*kaldırmak için, Topluluğu kuran Antlaşmanın 55, 56 ve 58 ila 65 inci (dahil) maddelerinden esinlenmekte olmuşlardır.”*

*(The Contracting Parties agree to be guided by Articles 55, 56 and 58 to 65 of the Treaty establishing the Community for the purpose of abolishing restrictions on freedom to provide services between them.)*

The equivalent of the expression “...**hizmet edimi serbestliği kısıtlamalarını...**” in German and French languages is literally as follows: Hizmet (*Dienst, service*), edim (*Leistung, prestation*), serbestlik (*Freiheit, Liberté*), kısıtlamalar (*Beschränkungen, restrictions*)<sup>11</sup>. In other words, “...**hizmet edimi serbestliği kısıtlamalarını...**” can be translated as:

“*Beschränkungen der Dienstleistungsfreiheit*”, or,

“...*les restrictions à la Liberté de prestation des services...*”

Article 41, Paragraph 1 of Additional Protocol (signed on November 23, 1970 and in effect on January 1, 1973) reads:

“*Akit Taraflar, aralarında, yerleşme hakkı ve hizmetlerin serbest edimine yeni kısıtlamalar koymaktan sakınırlar.*”<sup>12</sup>.

The literal translation of the expression “...**hizmetlerin serbest edimi...**” in German and French is as follows: “*freie Leistung von Diensten / libre prestation des services.*” In fact, the concept in German is “*freier Dienstleistungsverkehr.*” This concept, both in the Treaty Establishing the European Economic Community and in the last version of the Treaty on the Functioning of the European Union (TEFU), which was renamed the Treaty of Lisbon, was used together with the service concept (*Dienst*), and movement concept (*verkehr*). However, in the French version there is no equivalent expression for the movement concept, and only the service concept was defined. Therefore, it is more likely that the French version was used while drafting the Turkish version. The equivalent of the expression in question is “...**restrictions on freedom to provide services...**” Recognition of the English version in the Turkish translation is not possible, due to the fact that the UK officially became a member of the EU (EEC) on January 1, 1973. Accordingly, under no circumstances could the English version become the official text for the European Union during the drafting of the Association Agreement signed in 1962 and the Additional Protocol signed in 1970.<sup>13</sup>

11 See for the equivalent in German *Kiygı, Osman Nazım: Wörterbuch des Rechts- und Wirtschaftssprache, Band 2, München 1999*; See for French. *Dayınlarlı, Kemal: Dictionnaire des termes juridiques, 2. édition, Ankara 1997.*

12 For the German and French copies of Additional Protocol in the official gazette of EC dated 29.12.1972 and numbered L293/1 is like ([http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21970A1123\(01\):DE:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21970A1123(01):DE:NOT)), (the last utilization 18.01.2010)

“*Die Vertragsparteien werden untereinander keine neuen Beschränkungen der Niederlassungsfreiheit und des freien Dienstleistungsverkehrs einführen.*”

“*Les parties contractantes s'abstiennent d'introduire entre elles de nouvelles restrictions à la liberté d'établissement et à la libre prestation des services.*”

13 As *Gutmann* had mentioned justifiably by force of Article 64 of the Additional Protocol, the English version will not

Actually, there are no interpretation differences in EU law between the German, French and English versions. The freedom to provide services has been interpreted as including both the freedom to active and passive services by the secondary provisions of the EU<sup>14</sup> since the 1984 *Luisi and Carbone* decision which was the first decision the ECJ issued on this matter.<sup>15</sup>

*“1. The freedom to provide services includes the freedom, for the recipients of services, to go to another member state in order to receive a service there, without being obstructed by restrictions, even in relation to payments. Tourists, persons receiving medical treatment and persons travelling for the purposes of education or business are to be regarded as recipients of services.”*

Before laying down the legal foundations based solely on the concrete event in *Soysal*, the concept of ‘provide services’ that was mentioned in the English version was conveyed in the daily newspapers or in the books written by political scientists with deficient legal knowledge, as was mentioned in Turkish (*Dienst anbieten/erbringen*), “*hizmet sunumu*” (‘supply of service’), “*hizmeti sunan*” (‘supplier of service’) [*Dienst(s)leistung(er)bringer*] or ‘the movement of active service’. The possibility of misdirection on the part of Brussels, which may even have been intentional, should not be overlooked in connection with this incorrect phrase. Thus, the EU Commission, which gave guidance regarding the solid fact of the *Soysal* decision, faced a difficult test with regard to the very values that it defends, which, in turn, damaged the cogency of the EU in terms of EU values. However, one would have to be naïve to think that the EU was not aware what kind of interpretation had been used regarding the rights of Turkish nationals in the decisions of the ECJ and the consequences of those decisions. Clearly, the ECJ now interprets relevant decrees and concepts between the EU and Turkey identically, in the same way it interprets relevant decrees and concepts of EU law. As a matter of fact, the ECJ had benefited from the interpretations of the other concepts of the Community law in determining the meaning of the concepts in the Association law in many decisions concerning Turkish nationals.

be binding in the interpretation of Article 4. (*Die Umsetzung des Urteils Soysal mit Blick auf Deutschland*, VBIBW 2009, s. 324)

14 See: Article 1 of Council Directive 64/221/EEC on 25<sup>th</sup> of February 1964, and Article 1/1/a and b of Directive 73/148/EEC of 21 May 1973.

15 French copy:

*“1. LA LIBERTÉ DE PRESTATION DES SERVICES INCLUT LA LIBERTÉ DES DESTINATAIRES DES SERVICES DE SE RENDRE DANS UN AUTRE ETAT MEMBRE POUR Y BENEFICIER D'UN SERVICE, SANS ETRE GENES PAR DES RESTRICTIONS, MEME EN MATIERE DE PAIEMENTS. LES TOURISTES, LES BENEFICIAIRES DE SOINS MEDICAUX ET CEUX QUI EFFECTUENT DES VOYAGES D'ETUDES OU DES VOYAGES D'AFFAIRES SONT A CONSIDERER COMME DES DESTINATAIRES DE SERVICES.”*

German copy:

*“1. DER FREIE DIENSTLEISTUNGSVERKEHR SCHLIESST DIE FREIHEIT DER LEISTUNGSEMPFÄNGER EIN, SICH ZUR INANSPRUCHNAHME EINER DIENSTLEISTUNG IN EINEN ANDEREN MITGLIEDSTAAT ZU BEGEBEN, OHNE DURCH BESCHRÄNKUNGEN - UND ZWAR AUCH IM HINBLICK AUF ZAHLUNGEN - DARAN GEHINDERT ZU WERDEN. TOU- RISTEN SOWIE PERSONEN, DIE EINE MEDIZINISCHE BEHANDLUNG IN ANSPRUCH NEHMEN, UND SOLCHE, DIE STUDIEN- ODER GESCHÄFTSREISEN UNTERNEHMEN, SIND ALS EMPFÄNGER VON DIENSTLEISTUNGEN ANZUSEHEN. ”*

Also, the ECJ has paid attention to the interpretations of the secondary provisions in the Community Law in determining especially the content of the concept.

The ECJ stated that it has no reason for different interpretations in certain decisions. The ECJ has never repudiated the different interpretation style, like in the 1982 *Polydor* decision, by interpretation of the decrees of Association law between the EU and Turkey which has been subjected to more than fifty ECJ decisions.<sup>16</sup> In such cases, the decisions of the ECJ related to the freedom to provide services and the scope of this freedom must be taken into consideration in interpreting the terms of the EU-Turkey Association law.

### **b) Freedom to provide active services**

The providers of services and their workers (*Dienstleistungserbringer*) have been the subject matter of ECJ decisions for many years, and its decisions have become proven by the events of these decisions that have developed over time.<sup>17</sup> The main services within the scope of the freedom to provide active services which subject to the decisions are as follows:<sup>18</sup> transmission of telecasts, production of television and radio, legal advice, insurance, commerce and agency, employment agency, medical services, construction work, tourist guide service, gambling, advertisement, private security services, cleaning services, medical services, financial and accounting advisory and services of professional athletes.

### **c) Freedom to provide passive services**

Passive service procurement, involving people who obtain or benefit from these services (*Dienstleistungsempfänger*), was included within the scope of the freedom to provide services.<sup>19</sup> The first relevant case in this area was the decision of *Luisi and Carbone*.<sup>20</sup> In this decision, the ECJ clearly accepted the existence of the freedom to provide passive services within scope of the freedom to provide services. The ECJ reinforced its thinking in the same direction in the *Cowan* decision in 1989.<sup>21</sup> In this way, the freedom to provide passive services was unarguably accepted in its following decisions and also in practice.<sup>22</sup> In these ECJ decisions, it has been clearly stated that the services shall be provided not only in terms of the active circulation, i.e. the people and their employees who provide these services, but

16 See Pinar, Hamdi Zur Erschöpfung der Rechte an geistigem Eigentum zwischen den Mitgliedstaaten der Europäischen Union und der Türkei, GRUR Int. 2004, s. 102 vd. for the complete information

17 [http://ec.europa.eu/internal\\_market/top\\_layer/index\\_19\\_de.htm](http://ec.europa.eu/internal_market/top_layer/index_19_de.htm) (last utilization 17.12.2009)

18 *Randelzhofer/Forsthoff*, Art. 49/50 EGV, No: 38 vd.

19 See: <http://eur-lex.europa.eu> The Directive on the co-ordination of the movement and residence of foreigners dated 25th of February 1964, no. 64/221 (last utilization 18.1.2010)

20 See the decision of ABAD dated 31.1.1984 numbered C-286/82 ve 26/83. (<http://eur-lex.europa.eu>). See Völker, Stefan: Passive Dienstleistungsfreiheit im Europäischen Gemeinschaftsrecht, Berlin 1990, s. 62 vd. For the legal arguments before the decision

21 See: (<http://eur-lex.europa.eu>). For the decision of ABAD dated 2.2.1989 and numbered C-186/87.

22 *Hailbronner*, in: Hailbronner/Wilms: Recht der Europäischen Union, 13. Lfg., Stuttgart 2006, Art. 49, 50, No: 25 vd.



also in terms of the passive circulation, i.e. these services provided for the people who benefit from the freedom to provide services. In addition, it is emphasized in these decisions that the people for whom the service is provided shall have a right of domicile during the lifetime of the relevant service. People who travel for tourism, medical treatment, education or business purposes could be examples of people who receive these services.<sup>23</sup>

#### **d) Correspondance services (Korrespondenzdienstleistung)**

The supply of the correspondance services is not deemed to be transboundary, but the service itself is deemed to be transboundary. All kinds of insurance contracts that were accomplished by mail or by telephone, broadcasting of television and radio productions, banking, financial, consultancy and intermediary services and gambling services can be examples of these kinds of services when the decision of the ECJ is considered.<sup>24</sup>

### **CONCLUSION**

Consequently, the wording in the French, German and Turkish versions are targeted at the same purpose in terms of substantive law, except for the specific wording of the languages or the differences in the prepositional phrases. Both the primary and secondary provisions of law, as well as the decisions of the ECJ, will guide interpretation of these concepts. Also the freedom to provide services between nationals of the EU and Turkey has to be understood with the mode of administration in EU law since the decisions of the ECJ are considered within the scope of Turkish nationals and Association law.

The transboundary condition in terms of element of the freedom to provide services will be fulfilled in the case of services provided by a resident in Turkey; or in the case of a resident in an EU Member State receiving service from a resident in Turkey. In other words, Turkey does not have the status of a third country in EU law. It does not matter whether this service is an active, passive or correspondance service. The European Union strives to be a “Union of Values,” and the highest value is the rule of law. In fact, as well as other decisions, the necessary steps should have been taken a long time ago after the *Tüm and Dari* decision in 2007. This concept appeared in the *Soysal* decision of the ECJ without any objection but the EU Commission, unfortunately, has not yet fulfilled its duty regarding the rights of Turkish nationals by failing to urge the member states to follow its decisions and by not appealing to the precedents provided by the ECJ. Also, instead of allowing entry without visa, but instead reviving an application process

<sup>23</sup> See for details: *Völker*, 129 vd., 156 vd. ve 204 vd.; *Tiedje/Troberg*, Art. 49, No: 12; *Randelzhofer/Forsthoff* (dn. 15), Art. 49/50 EGV, No: 43; *Roth*, E. I., No: 141; *Hailbronner*, Art. 49, 50, No: 26 vd.

<sup>24</sup> See for details *Völker*, s. 59 vd.; *Tiedje/Troberg*, Art. 49, No: 13; *Randelzhofer/Forsthoff* (dn. 15), Art. 49/50 EGV, No: 44; *Roth*, E. I., No: 140; *Hailbronner*, Art. 49, 50, No: 30 vd.

for such as a visa, was an attitude which contradicts EU values and harms the prestige of the EU Commission as well as being possibly viewed as an abuse of Turkey's silence on this issue. In a similar way, the Member States, especially France, Italy, Spain and Germany, who are looking for a way to implement a special agreement by reviving the visa process for Turkish nationals, are applying a double standard which contradicts their own values and the EU values; unfortunately this stance vilifies these states.

It is important for the EU to put an end to this double standard, both for the future of the EU and also for the support of Turkish citizens, for the full membership of Turkey in the EU, because being an EU member is only valuable when the EU protects its own values and follows the rule of law.